

NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND
MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
See Ariz. R. Supreme Court 111(c); ARCAP 28(c); Ariz. R. Crim. P. 31.24

FILED BY CLERK

SEP -9 2011

COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

THE STATE OF ARIZONA,)	2 CA-CR 2011-0138-PR
)	DEPARTMENT A
Respondent,)	
)	<u>MEMORANDUM DECISION</u>
v.)	Not for Publication
)	Rule 111, Rules of
JEFFREY WAYNE HARMON,)	the Supreme Court
)	
Petitioner.)	
_____)	

PETITION FOR REVIEW FROM THE SUPERIOR COURT OF PINAL COUNTY

Cause No. S1100CR200802099

Honorable Robert C. Brown, Judge Pro Tempore

REVIEW DENIED

James P. Walsh, Pinal County Attorney
By Greg Bizzozero

Florence
Attorneys for Respondent

Michael Villarreal

Florence
Attorney for Petitioner

H O W A R D, Chief Judge.

¶1 Petitioner Jeffrey Harmon seeks review of the trial court's order summarily dismissing his of-right petition for post-conviction relief filed pursuant to Rule 32, Ariz.

R. Crim. P. We will not disturb that ruling unless the court clearly has abused its discretion. *See State v. Swoopes*, 216 Ariz. 390, ¶ 4, 166 P.3d 945, 948 (App. 2007).

¶2 Harmon pled guilty to resisting arrest and was sentenced to an enhanced, maximum 2.25-year prison term. He filed a petition for post-conviction relief arguing the sentencing court had erred in aggravating his sentence on the basis of his blood alcohol content (BAC) at the time of the offense, asserting the search warrant for the blood draw was flawed. He additionally asserted his trial counsel had been ineffective in failing to raise that claim. The trial court summarily denied relief, concluding it had relied properly on Harmon’s BAC as an aggravating factor.

¶3 On review, Harmon argues the BAC reading was “clearly not shown to apply to [him]” and was “not supported by evidence.” Even assuming, without deciding, that Harmon’s petition for post-conviction relief reasonably can be read to have raised this claim in the trial court, his petition for review, like his petition for post-conviction relief, is devoid of citation to legal authority. Moreover, he fails to provide useful citations to the record in his petition for review, providing only a single citation to the sentencing transcript to demonstrate the trial court relied on the BAC as an aggravating factor. He does not explain how the information concerning the BAC was provided to the sentencing court, why the sentencing court’s consideration of that information was legally incorrect, or why the trial court erred in summarily rejecting his petition for post-conviction relief. To the extent Harmon attempts to incorporate in his petition for review his petition for post-conviction relief, that procedure does not comply with our rules. Ariz. R. Crim. P. 32.9(c)(1)(iv).

¶4 Harmon’s failure to provide adequate citations to the record or provide any legal argument whatsoever justifies our summary refusal to accept review. *See* Ariz. R. Crim. P. 32.9(c)(1) (petition for review must comply with rule governing form of appellate briefs and contain “reasons why the petition should be granted” and either appendix or “specific references to the record”), (f) (appellate review under Rule 32.9 discretionary); Ariz. R. Crim. P. 31.13(c)(1)(vi) (briefs must contain argument and supporting authority); *see also State v. Bolton*, 182 Ariz. 290, 298, 896 P.2d 830, 838 (1995) (insufficient argument waives claim on review); *State v. French*, 198 Ariz. 119, ¶ 9, 7 P.3d 128, 131 (App. 2000) (summarily rejecting claims not complying with rules governing form and content of petitions for review), *disapproved on other grounds by Stewart v. Smith*, 202 Ariz. 446, ¶ 10, 46 P.3d 1067, 1071 (2002).

¶5 Review Denied.

/s/ Joseph W. Howard
JOSEPH W. HOWARD, Chief Judge

CONCURRING:

/s/ Peter J. Eckerstrom
PETER J. ECKERSTROM, Presiding Judge

/s/ J. William Brammer, Jr.
J. WILLIAM BRAMMER, JR., Judge